

DOCKET FILE COPY ORIGINAL  
LEIBOWITZ & SPENCER  
A PARTNERSHIP OF PROFESSIONAL CORPORATIONS

RECEIVED

JAN 11 1993

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY  
SUITE 500  
1000 CONNECTICUT AVENUE, N.W.  
WASHINGTON, D.C. 20036

MATTHEW L. LEIBOWITZ, P.A.  
JOHN M. SPENCER, P.C.  
JOSEPH A. BELISLE

OF COUNSEL  
SANFORD L. BOHRER  
SID DAVIDOFF  
JEROME M. BECKER  
805 3RD AVENUE  
34TH FLOOR  
NEW YORK, N.Y. 10158

SUITE 1450  
AMERIFIRST BUILDING  
ONE SOUTHEAST THIRD AVENUE  
MIAMI, FLORIDA 33131-1715

TELEPHONE (305) 530-1322  
TELECOPIER (305) 530-9417

\* NOT ADMITTED TO  
FLORIDA BAR

January 11, 1993

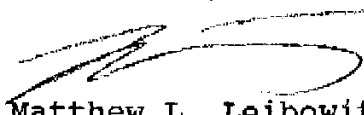
Ms. Donna R. Searcy  
Secretary  
Federal Communications Commission  
1919 M Street  
Washington, D.C. 20554

Re: Rule Making Comments  
MM Docket No. 92-263

Dear Ms. Searcy:

Transmitted on behalf of The City of Miami Beach, Florida,  
please find an original plus nine copies of its Comments in the  
Cable Television Rule Making presently before the Federal  
Communications Commission in MM Docket No. 92-263.

Sincerely yours,

  
Matthew L. Leibowitz  
Counsel for  
The City of Miami Beach, Florida

MLL/mdr

No. of Copies rec'd  
List A B C D E

*0+9*

RECEIVED

Before the  
Federal Communications Commission  
Washington, D.C. 20554

JAN 11 1993

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
Implementation of Section 8 of )  
the Cable Television Consumer )  
Protection and Competition Act )  
of 1992 )  
 )  
Consumer Protection and Customer )  
Service )

MM Docket No. 92-263

COMMENTS

1. The City of Miami Beach, Florida, through undersigned counsel, hereby submits Comments in the above-referenced rule making concerning the adoption and implementation of appropriate consumer protection and customer service standards pursuant to the Cable Television Consumer Protection and Competition Act of 1992.

2. The City of Miami Beach is the local franchising authority for a city-wide cable television service provided by Gold Coast Cablevision.<sup>1</sup> Customers of Gold Coast Cablevision have reported numerous complaints over the years regarding customer service. These include missed appointments, bad reception, overcharges, rate increases, service outages, and difficulty in reaching the cable operator by telephone. Thus, we look forward to the adoption of customer service standards that are locally enforced to achieve a higher level of customer satisfaction.

---

<sup>1</sup> Dade County also issues a franchise for any cable system within the county. See Dade County Code Section 8AA.

Implementation Process:

3. The FCC, in its Notice, seeks comments on whether any "service requirements" that it may adopt under this rule making are self-executing or if not, what actions if any, are required to be taken by local franchise authorities to impose the Commission's standards. In this context the Commission also inquires as to whether these customer service requirements can be imposed only as part of an initial franchise award or renewal, or can be imposed during the term of a current franchise. Similarly, the FCC seeks input as to the effective date of its rules and how such an effective date relates to existing franchise agreements.

4. We agree with the FCC text that "it [is] unlikely that the Congress intended for there to be no changes in customer service requirements prior to the adoption of each current franchise agreement." Moreover, as noted by the Commission, the time limitation previously imposed upon local franchising authorities under Section 632(a) in the 1984 Cable Act is not contained in the 1992 Cable Act. Further, the Commission was mandated to prescribe customer service standards within 180 days after enactment, a very expedited rule making by Commission standards. Accordingly, the only logical conclusion that can be drawn is that Congress intended these customer service standards to be expeditiously implemented without regard to the term of existing franchise agreements on the effective date of the

Commission's rules.<sup>2</sup>

5. With respect to the implementation of these standards, we believe that no further action is required to be taken by the local franchising authority to adopt or establish these standards on a local basis. In contrast, however, if a franchising authority seeks to impose additional conditions to the extent not specifically preempted by the Cable Act or to impose higher standards than those adopted pursuant to this rule making, it must do so through mutual agreement with the cable operator, or the establishment of an appropriate municipal law or regulation. Since such actions may be limited by existing franchise agreements, adoption of any local customer service standards beyond those imposed by the FCC will be effectively delayed for many years. Thus, any short term improvement in customer service will only be forthcoming as a result of the adoption of adequate minimum standards that are self-executing by the FCC in this rule making.

National Standard: Modified NCTA Standards

6. While we are sensitive to the difficulties in establishing national standards, the legislative history of the Cable Act is proof perfect of the need for such a standard. Congress clearly recognized that in the absence of a clear national standard, cable customer service will continue at an unacceptable

---

<sup>2</sup> Some cable operators will require time to add additional personnel and perhaps telephone lines to accomplish these standards. Thus, the Commission may find it necessary to provide for a reasonable implementation period, but such period should be no more than 3 months after the effective date of the Commission rules.

level.

7. The NCTA standards, as industry adopted voluntary standards are welcome. However, they represent the starting place or lowest common denominator within the cable industry, without input or appropriate consideration of the customers' needs and interests or input from franchising authorities. Clearly, if Congress had felt that the NCTA standards were adequate they would have codified them without necessitating this FCC rule making. Obviously, they didn't. Therefore, the FCC should consider these standards, as Congress mandated, as a starting point from which the FCC, after input from other interested parties (consumer and local franchising authorities) will define the appropriate balancing of needs and interests.<sup>3</sup>

**Specific Elements:**

**Office and Telephone Availability**

8. Cable operators provide cable service 24 hours a day, 365 days a year, just like the telephone company or the power company. Thus, although we do not believe that a cable operator must keep its offices open full time, it must make available qualified company representatives to be available by telephone on a full-time basis.<sup>4</sup> Moreover, a customer seeking assistance should not be

---

<sup>3</sup> We believe that any national standard must recognize the different circumstances surrounding a cable system serving less than a 1000 subscribers.

<sup>4</sup> The City does not object to the cable operator using qualified answering services, if and only if, they are provided with adequate training and current information regarding cable service and outages, and are able to schedule repairs.

required to call back due to busy signals for long periods of time or be left on hold for long periods of time.<sup>5</sup> In this regard, the NCTA standards of receiving a busy signal less than three percent of the time, having the phone answered by a service representative, including waiting time and transfer time not exceeding 30 seconds or if using an automated service not allowing more than four routine rings is adequate. However, compliance with these standards should be measured on a monthly basis. To extend the measurement over a year would allow significant variations of service to be averaged together, weighted by significant time to provide a distorted prospective of the true state of customer service during any given time period.<sup>6</sup>

9. In addition, customer billing and service centers must make some accommodations to those who work a traditional work week (Monday-Friday 9:00 AM to 5:00 PM). Therefore, cable operators should maintain open offices to provide at least one night and/or Saturday 9:00 AM to 1:00 PM services.

#### Installation, Outages and Service Calls

10. In the context of installations, outages, and service calls, once again the NCTA standards do provide a valuable first

---

<sup>5</sup> There have been complaints of customers receiving busy signals on Saturday or Sunday or even early Monday morning for almost an hour.

<sup>6</sup> The Florida Public Service Commission uses a monthly analysis for similar customer service issues for local telephone service. See Fla. Admin. Code Section 25.4.070. We believe state telephone standards are an appropriate analogous standard since absent effective competition, the cable operator and the local telephone service are both monopoly providers of service.

step, but must be modified. Again, the measuring period must be monthly, not annually. Service interruptions and service problems must be cleared on a 24 hour basis, not merely responded to by the cable operator.

11. Moreover, we believe that for any service standards to have meaning and positive impact on the quality of customer service, such standards must include penalties for failure of service. Specifically, we propose that in the event total service to any subscriber is interrupted for twenty-four hours or more due to the fault of the cable operator, the cable operator should be required to automatically rebate or credit, without request by the subscriber, an amount equal to 20% of the total monthly fees for each 24 hour period during which the subscriber is without service. In the event that total service is interrupted for 6 or more hours, the cable operator should automatically credit the subscriber an amount equal to one-thirtieth (1/30) of the total monthly bill. For purposes of computing time of interrupted total service, the time shall begin when a complaint of interrupted total service is received by the cable operator or when the cable operator has actual or constructive notice of the interruption, whichever is first.<sup>7</sup>

---

<sup>7</sup> A similar provision is included in Metro-Dade County, Florida Cable Television Ordinance, Dade County Code Section 8AA-58(e).

### Communications, Bills & Refunds

12. In the third area of communication, bills and refunds, the NCTA standards are more responsive to consumer needs. However, 45 days to get a refund is too long and should be reduced to 30 days.

13. Moreover, we believe that the NCTA fails to address a fundamental communication issue, that is informing cable subscribers of the cable operators' service policies and how to seek assistance in the event of service problems. Therefore, we propose that every six months the cable operator be required to include in its monthly bills, a summary, mutually agreed to with the franchise authority, setting forth the cable operator's customer service practices and procedures. In addition, each monthly bill should include in a reasonably prominent location with sufficient type size, the cable operator's service telephone numbers, and the telephone and address of the responsible administrator with the local franchise authority to receive and process complaints about cable service.

### Compliance and Enforcement

14. The Commission raises questions concerning compliance oversight and enforcement for violations of these standards. Clearly, Congress contemplated that compliance should be maintained and enforced on a local basis.<sup>8</sup> However, the rule making fails to address any compliance and enforcement standards. We believe the

---

<sup>8</sup> See Section 632(a)(1) of the Cable Act.



adoption of such minimum enforcement standards are encompassed within the congressional mandate calling for customer service requirements in Section 632(b).

15. As a first step we propose that the FCC require a periodic (annual) certification by the cable operator to the local franchising authority that it is complying with the standards. However, the franchising authority, with proper notice, should be allowed to audit the cable operators' systems and review records to independently confirm such compliance.<sup>9</sup> Such a check and balance will effectively and efficiently achieve compliance in many instances.

16. As a second step, the Commission should adopt a minimum forfeiture for a cable operator's failure to comply with the FCC's minimum customer service requirements. Currently, the FCC's forfeiture standards include a fine of up to \$200 per day for cable EEO violations pursuant to Section 634.<sup>10</sup> Therefore, we believe a \$200 per day fine for Section 632 violations would also be

---

<sup>9</sup> Cable operators should be required to maintain daily records reflecting customer complaints and then how they were handled. These records should be available to the franchising authority, and monthly summaries should be submitted to the franchising authority.

<sup>10</sup> See Policy Statement, Standards for Assessing Forfeitures, 69 RR2d 823 (1991), Recon. denied, 70 RR2d 1206 (1992)

appropriate. Such a forfeiture, after proper notice and response, could be the primary enforcement mechanism relied upon by franchising authorities during the franchise term.

Respectfully Submitted,



Matthew L. Leibowitz  
Counsel for  
The City of Miami Beach, Florida

January 11, 1993

Leibowitz & Spencer  
One S.E. Third Avenue  
Suite 1450  
Miami, FL 33131  
(305) 530-1322